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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/418,902 10/15/99 KLEMP

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EXAMINER

KIDWELL, M

ART UNIT

PAPER NUMBER

3761

DATE MAILED:

08/28/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

**Office Action Summary**

Application No.

09/418,902

Applicant(s)

KLEMP ET AL.

Examiner

Michele M. Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 June 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

- Reference line 4 – 4
- Reference line CC
- Reference character 36a
- Reference character 80d
- Reference character 10"
- Reference character 50"

Correction is required.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because:

- Reference character "10" has been used to designate a disposable absorbent garment, an article and a diaper
- Reference character "46" has been used to designate both a fluffed core and a top surface of the core
- Reference character "36" has been used to designate various features including upstanding leg gathers, side walls, barrier cuffs, side edge regions, etc. Consistent terminology would allow for a clearly identifiable reading of the disclosure.

- Reference character "96" has been used to designate both retention compartment and containment pocket. Consistent terminology would allow for a clearly identifiable reading of the disclosure.
- Reference character "80c" has been used to designate soffit sections, elastic wall sections and wall sections. Consistent terminology would allow for a clearly identifiable reading of the disclosure.
- Reference character "16" has been used to designate both a crotch region and a cross region (page 18 of the disclosure).
- Reference character "18" has been used to designate ear regions, ears and the ear layer of the inner region. Consistent terminology would allow for a clearly identifiable reading of the disclosure.
- Reference character "12" has been used to designate both a first end region and a front waist region. Consistent terminology would allow for a clearly identifiable reading of the disclosure.
- Reference character "14" has been used to designate both a second end region and a back waist region. Consistent terminology would allow for a clearly identifiable reading of the disclosure.

Correction is required.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

- Reference character 20 as shown in figure 1
- Reference character 92' as shown in figure 5

- Reference character 36' as shown in figure 5
- Reference character 90' as shown in figure 5
- Reference character 26' as shown in figure 5
- Reference character 98' as shown in figure 5
- Reference character 26'' as shown in figure 6

Reference character 80c'' as shown in figure 6

- Reference character 92'' as shown in figure 6
- Reference character BB'' as shown in figure 6
- Reference character AA'' as shown in figure 6

Correction is required.

### ***Claim Rejections - 35 USC § 102***

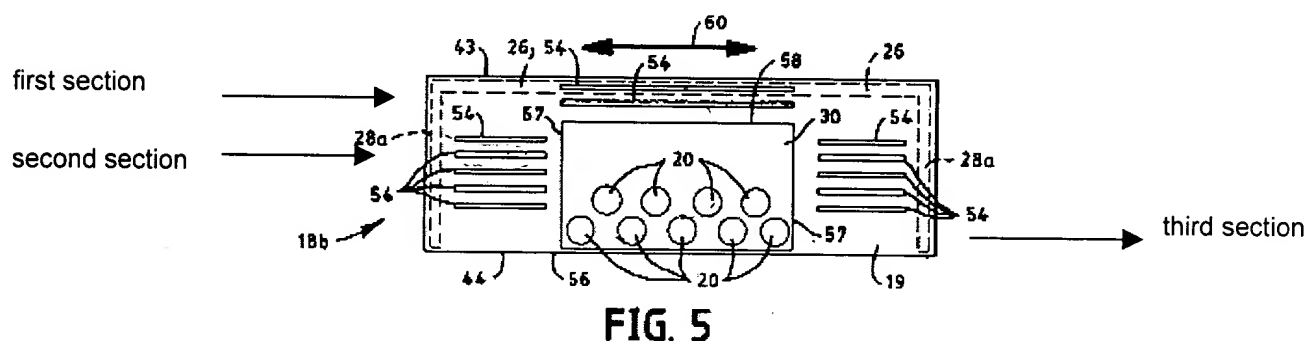
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1 – 11, 14 – 18, 38, 46- 47, 51 – 59, 61, 63 – 66, 68 – 69 and 71 are rejected under 35 U.S.C. 102(e) as being anticipated by Turner et al. (US 6,135,988).

With respect to claim 1, Turner et al (hereinafter referred to as Turner), teaches a disposable absorbent article having side and end edges (10), a topsheet layer (12), a backsheet layer (14), an absorbent core (16), and at least one end strip (18, 19) as shown below:



Turner discloses the first section having generally elastic properties (col. 9, lines 42 – 43), and the second section can be understood to be substantially less elastic than the first section since the second section includes apertures (page 11 of the applicant's specification). Additionally, Turner teaches the third section being spaced away from the topsheet and core as set forth in col. 4, lines 65 – 66.

As to claim 2, Turner teaches the second section to be formed from elastic (col. 9, lines 42 – 43) and having at least one void (figure 5).

Regarding claim 3, Turner discloses the first and second sections being secured to the topsheet in col. 4, lines 37 – 40.

With reference to claims 4, 8 and 10, Turner shows the end strip to be formed from elastic material in col. 9, lines 42 – 43.

As to claim 5, Turner discloses the second section with a plurality of voids in figure 5.

With respect to claim 6, Turner teaches the first section to form a waistband portion in figure 3.

Regarding claim 7, Turner discloses the first section fixed along one of said end edges in figure 3.

With reference to claim 9, Turner shows the article with the third section including side portions, a pair of side walls (64), and each side portion of the third section being secured to one of the end portions of the side wall structure with an intermediate portion of each side wall being biased generally upward in figure 6.

With respect to claim 11, Turner teaches the article with a containment pocket having a depth dimension (col. 5, lines 19 – 22), and being bound by a substantially continuous wall being defined by the third sections of the end strip (figure 6).

As to claim 14, Turner discloses the article wherein an intermediate portion of the side edges extends generally parallel with the core and is upwardly biased in figure 6.

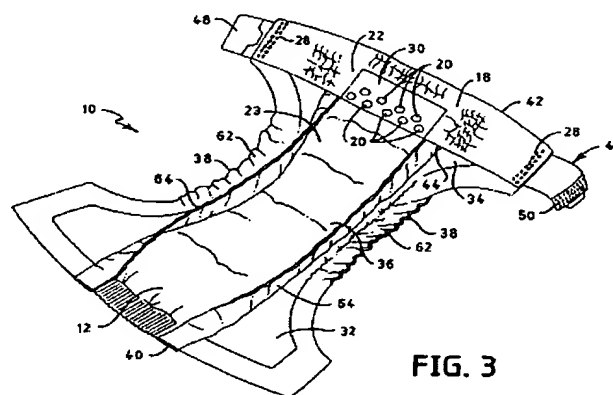
With reference to claim 15, Turner teaches the wall structure to include a portion of the topsheet at least one elastic member in col. 12, lines 36 – 40 and figure 6).

Regarding claim 16, Turner shows the first and second sections fixed to the topsheet (col. 4, lines 38 – 40), the third section extending upwardly (col. 4, line 65, figure 6) and the first and third sections being elastic (col. 9, lines 42 – 43) with the second section substantially inelastic (figure 5 and the rejection of claim 1).

As to claim 17, Turner discloses a front waist region (32), a back waist region (34), a crotch region (36), the core being disposed in the crotch region (16), an ear region (figure 3), and an end strip extending laterally into two of said ear regions (figure 3).

With respect to claim 18, Turner provides an end strip constructed from elastic material (col. 9, lines 42 – 43) being secured to the topsheet (col. 4, lines 38 – 40) which would in turn serve to provide tension in the waist region.

Regarding claim 38, see the rejection of claim 1. Additionally, Turner teaches the containment pocket having a depth dimension (col. 5, lines 19 – 22), with the pocket being disposed generally in the crotch region (figure 6) and being bound by a substantially continuous containment wall which includes the flap portion (18) and the containment flaps (64) providing at least two elastic wall sections and two intermediate wall sections with the intermediate wall sections being generally biased upwards as shown in figure 3.



**FIG. 3**

As to claim 46, see figure 6.



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As to claim 47, see the rejection of claim 15.

With reference to claim 51, see col. 9, lines 42 – 43.

As to claims 52 and 53, see col. 4, lines 37 – 40. Turner shows the elastic wall section (flap) to be adhesively joined to the topsheet, thereby making the flap a separate component yet allowing the to be partially formed by a portion of the topsheet, the portion being the point at which the flap is joined to the topsheet.

With respect to claims 54 – 59, Turner teaches an article meeting all of the limitations of the claims as previously addressed in the rejection of claims 1 – 18 with the fixed waist section being represented by the first and second sections and the elastic inward section being represented by the third section.

With reference to claim 61, Turner discloses an article meeting all of the limitations of the claim as previously addressed in the rejection of claims 1 – 18 with the elastic end section being represented by the first section, the substantially non-elastic intermediate section being represented by the second section, and the elastic inward section being represented by the third section.

Regarding claims 63 – 66, Turner teaches an article meeting all of the limitations of the claim as previously addressed in the rejection of claims 1 – 18 with a pair of tensioned regions being recited as waist elastics in col. 12, lines 48 – 50.

With reference to claims 68 – 69 and 71, see figure 5.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 – 13, 19 – 37, 39 – 45, 48 – 50, 60, 62, 67, 70 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner et al (US 6,135,988).

With reference to claims 12 – 13, 27 – 28, 48 – 50, 60, 62 and 67, Turner has disclosed a pocket being formed in col. 4, line 65 to col. 5, line 7. This pocket would obviously provide a depth dimension as claimed by the applicant. It would be obvious to one of ordinary skill in the art to adjust the depth measurement in order to arrive at the claimed invention through the use of mere routine experimentation and observation.

As to claims 19 and 39, Turner provides the claimed invention with one end strip and the elastic inward section being represented by the third section as previously addressed in the rejection of claims 1 and 9 and figure 6. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an additional end strip to the invention of Turner since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

With respect to claim 20, see the rejection of claim 11.

With reference to claim 21, see figure 6 and the rejection of claim 19.

As to claim 22, see col. 9, lines 42 – 43.

Regarding claims 23 and 24, see the rejection of claim 1.

As to claim 25, see the rejection of claim 14.

With reference to claim 26, see the rejection of claim 15.

As to claim 29, see the rejection of claim 1. Turner teaches the flap to be joined to the topsheet (constituting a fixed end section) in col. 4, lines 38 – 40. Additionally, Turner discloses the section to be substantially elastic (col. 9, lines 42 – 43). The fixed end section is comparable to the second section as shown in the drawing incorporated in the rejection of claim 1. Likewise, the elastic inward section is comparable to the third section as shown in the drawing incorporated in the rejection of claim 1.

With regard to claim 30, see figure 6.

As to claim 31, see the rejection of claim 1 with the intermediate section being comparable to the second section as shown in the incorporated drawing.

As to claim 32, see col. 9, lines 42 – 43.

With reference to claim 33, see the rejection of claim 1.

With respect to claim 34, see col. 4, lines 38 – 40.

As to claim 35, Turner teaches the flap to be adhesively joined to the topsheet in col. 4, lines 38 – 40. This would include the first and second sections as indicated in claim 1. The third section, which is comparable to the inward section, would not be included since this is the lowermost part which forms a pocket (col. 4, line 65, figure 6) indicating that this portion is not secured to the topsheet. The first and second section would then form an affixation section since they are adhesively joined to the topsheet. The inward section, in turn, would be substantially more elastic than the affixation

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section since it includes the apertures of the second section as previously addressed in the rejection of claim 1.

With reference to claim 36, see the rejection of claim 1.

As to claim 37, see the rejection of claim 17.

With respect to claim 39, Turner teaches the end strip (18) to be secured to one of the waist regions including an elastic inward section (third section in the rejection of claim 1) to be spaced away from the topsheet (col. 4, line 65 and figure 3) and forming the elastic wall sections of the containment wall (figure 3).

With reference to claim 40, see the fixed end section is represented by the first and second sections in the drawing incorporated in the rejection of claim 1 since both sections are adhesively joined to the topsheet. This section substantially adjacent one of said end edges as seen in figure 3.

With respect to claim 41, see the rejection of claim 1 with regard to the second section of the end strip.

As to claim 42, see figure 3.

With respect to claims 43 – 45, see the rejection of claim 1.

Regarding claims 70 and 72, the absence of a critical teaching and/or unexpected results leads the examiner to believe that the claimed limitations would be an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art invention.

***Response to Arguments***

Applicant's arguments filed June 6, 2001 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., three distinct sections) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the applicant's statement that Turner does not teach or suggest three sections wherein a first elastic section has generally elastic properties and wherein a second elastic section is substantially more elastic "that the second section" (page 6, line 6 of the response dated June 6, 2001). The applicant's argument is unclear. However, by applicant's admission, Turner discloses that the flap may include a layer of elastomeric material. Turner also teaches the layer to have apertures, which the applicant discloses on page 11 of the specification functions to substantially de-elasticize the immediate are adjacent the apertures.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

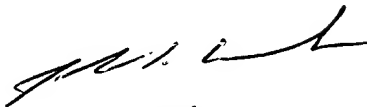
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-0858.

*Michele Kidwell*  
Michele Kidwell  
August 25, 2001

  
John G. Weiss  
Supervisory Patent Examiner  
Group 3700